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No. 90-1844

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

RAY JAMES MUNN, Individually, and Ray James Munn, Administrator of the Estate of Elaine Munn, Deceased, on Behalf of the Heirs at Law and Wrongful Death Beneficiaries of Elaine Munn, Deceased,

Petitioner,

vs.

TRUDY E. ALGEE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION AND BRIEF OF *AMICUS CURIAE* WATCHTOWER BIBLE AND TRACT SOCIETY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Watchtower Bible and Tract Society of New York, Inc., (Watchtower) hereby moves this Court for leave to file the accompanying brief *amicus curiae* in support of Ray James Munn's petition for writ of certiorari. Mr. Munn has given Watchtower written consent to file a brief *amicus curiae* but Respondent has refused such

consent, thereby necessitating this motion. Copies of the letters showing Mr. Munn's consent and Respondent's refusal have been filed with the Clerk.

Watchtower, a not-for-profit religious corporation, is the parent organization of Jehovah's Witnesses in the United States. In 1990, over 1,883,000 persons attended meetings at the over 9,300 congregations of Jehovah's Witnesses in the United States. A well-known but commonly misunderstood teaching of Jehovah's Witnesses is their refusal of blood transfusions.[1] Petitioner Ray James Munn is one of Jehovah's Witnesses, as was his late wife, Elaine Munn. Mrs. Munn's religiously motivated refusal of blood was the center of both the trial and the appeal of this case. Mr. Munn's petition for writ of certiorari is therefore of great interest and importance to Jehovah's Witnesses. Moreover, Watchtower, as the Witnesses' parent organization, has a unique perspective

1. Scores of cases dealing with the Witnesses' choice of medical treatment without blood have been reported over the past several decades. A few of the more recent cases include *Norwood Hospital v. Munoz*, 409 Mass. 116, 564 N.E.2d 1017 (1991); *Fosmire v. Nicoleau*, 75 N.Y.2d 218, 551 N.E.2d 77, 551 N.Y.S.2d 876 (1990), *aff'g* 144 A.D.2d 8, 536 N.Y.S.2d 492 (2d Dep't 1989); *In re E.G.*, 133 Ill. 2d 98, 549 N.E.2d 322 (1989), *aff'g on other grounds* 161 Ill. App. 3d 765, 515 N.E.2d 286 (1987); *Public Health Trust v. Wons*, 541 So. 2d 96 (Fla. 1989), *aff'g* 500 So. 2d 679 (Fla. Dist. Ct. App. 1987). *See generally* Annot., *Patient's Right to Refuse Treatment Allegedly Necessary to Sustain Life*, 93 A.L.R.3d 67 (1979 & Supp. 1990).

of the problems Jehovah's Witnesses face in obeying the fundamental Scriptural directive to 'abstain from blood.' *Acts* 15:28, 29.

For the foregoing reasons, Watchtower moves this Court for leave to file the accompanying brief *amicus curiae* to explain the nature and background of the Witnesses' refusal of blood.

Respectfully submitted,

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THE EXTANT WORKS OF
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LUTHER'S WORKS (E. Gritsch ed. n.d.) 13

MCCLINTOCK AND STRONG'S CYCLOPÆDIA OF BIBLICAL, THEOLOGICAL AND ECCLESIASTICAL LITERATURE (reprint 1981) 7, 11

I. NEWTON,
THE CHRONOLOGY OF ANTIENT KINGDOMS AMENDED (Dublin 1728) 15

S. PARPOLA,
LETTERS FROM ASSYRIAN SCHOLARS TO THE KINGS ESARHADDON AND ASSURBANIPAL (Neukirchen-Vluyn 1970) 2

THE THEOLOGICAL AND MISCELLANEOUS WORKS, &C. OF JOSEPH PRIESTLEY (reprint 1972) 15

E. REUSS,
LA BIBLE: LA THÉOLOGIE JOHANNIQUE (1879) . . . 11

G. RICCIOTTI,
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B. SANTINELLI,
CONFUSIO TRANSFUSIONIS, SIVE CONFUTATIO OPERATIONIS TRANSFUNDENTIS SANGUINEM DE INDIVIDUO AD INDIVIDUUM (Rome 1668) 14

B. SEEMAN,
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TERTULLIAN
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TERTULLIAN,
APOLOGETICAL WORKS
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TERTULLIAN,
APOLOGY
(Loeb Classical Library, T. Glover trans. 1931) . . . 9

WATCH TOWER BIBLE & TRACT SOC'Y PA.,
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WATCH TOWER BIBLE & TRACT SOC'Y PA.,
HOW CAN BLOOD SAVE YOUR LIFE? (1990) . . . 18, 19

WATCH TOWER BIBLE & TRACT SOC'Y PA.,
JEHOVAH'S WITNESSES AND THE
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M. WINTROBE,
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Recognitions of Clement,
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The Clementine Homilies,
in VIII THE ANTE-NICENE FATHERS
(A. Roberts & J. Donaldson eds. n.d.) 10

de Courcelles,
Diatriba de Esu Sanguinis Inter Christianos,
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Eusebius,
in I THE ECCLESIASTICAL HISTORY
(Loeb Classical Library 1980) 9

Origen Against Celsus,
in IV THE ANTE-NICENE FATHERS
(A. Roberts & J. Donaldson eds. 1956) 10

Origen's Commentary on Matthew,
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(A. Menzies ed. n.d.) 10

Regino,
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Solomon,
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(A. Roberts & J. Donaldson eds. 1962) 10

THE ANTE-NICENE FATHERS
(A. Roberts & J. Donaldson eds. 1956) 9

ENCYCLOPEDIA AMERICANA (rev. ed. 1929) 2, 3

Periodicals

Bonakdar, et al.,
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Corno, et al.,
Heart Transplantation in a Jehovah's Witness,
J. Heart Transplantation, Mar./Apr. 1986 19

Henling, et al.,
Cardiac Operation for Congenital Heart Disease in Children of Jehovah's Witnesses, 89 J. Thoracic & Cardiovascular Surgery 914 (1985) 19

Howell & Bamber,
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Kaufman, et al.,
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Mariorenzi & Pierik,
Quadruple Major Joint Replacement in Member of Jehovah's Witnesses,
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Nearman & Eckhauser,
Postoperative Management of a Severely Anemic Jehovah's Witness,
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Winter & Swayze,
Severe Neurofibromatosis Kyphoscoliosis in a Jehovah's Witness—Anterior and Posterior Spine Fusion Without Blood Transfusion,
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Awake!, Aug. 8, 1950 18

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INTEREST OF *AMICUS CURIAE*

The interest of Watchtower Bible and Tract Society of New York, Inc., is set forth in Watchtower's accompanying motion for leave to file this brief.

ARGUMENT

Jehovah's Witnesses believe that "[a]ll Scripture is inspired of God and beneficial for teaching, for reproving, for setting things straight." 2 *Timothy* 3:16; *see also Isaiah* 48:17. They therefore devote themselves to the study of God's Word, the Holy Bible, and they strive to apply its counsel in all aspects of their lives. *See John* 17:3; *James* 1:22. In matters of health and medical care, the Witnesses recognize Jehovah God as the source of life and therefore view their lives as a gift from God. *Psalms* 36:9. Jehovah's Witnesses believe they have an obligation to God to safeguard their health. 2 *Corinthians* 7:1. The Witnesses do not smoke, use illicit drugs, overindulge in alcohol, or practice abortion. And while the Witnesses freely seek medical care,[1] they obey the plain Scriptural directive to "keep abstaining . . . from blood." *Acts* 15:28, 29.

The following discussion will present a historical overview of the use of blood through the ages and the Biblical basis for the Witnesses' refusal of blood.

1. The Witnesses do not believe in or practice any kind of faith or spiritual healing. *See Luke* 5:31; *The Watchtower*, Dec. 1, 1987, at 4-7; *The Watchtower*, Nov. 1, 1954, at 644-48.

1. An Overview of the Use of Blood

From ancient times men have used human and animal blood for many ritualistic and medicinal purposes. B. SEEMAN, THE RIVER OF LIFE 53-59 (1961). The pharaohs of ancient Egypt are said to have bathed in human blood for recuperation and as treatment for leprosy and elephantiasis. P. HAGEN, BLOOD: GIFT OR MERCHANDISE 11 (1982); B. SEEMAN, *supra*, at 56. In ancient Assyria, the son of King Esar-haddon reportedly drank blood for "internal application" as prescribed by his physician. S. PARPOLA, LETTERS FROM ASSYRIAN SCHOLARS TO THE KINGS ESARHADDON AND ASSURBANIPAL, Part I: Texts at 201 (Neukirchen-Vluyn 1970). Later, Romans were "said to have rushed into the gladiatorial arena to drink the blood of the dying to receive their courage." P. HAGEN, *supra*, at 11. As for the transfusion of blood, it too reportedly dates back to the time of the ancient Egyptians, Syrians, and Greeks. B. SEEMAN, *supra*, at 58-59; *see also* 4 ENCYCLOPEDIA AMERICANA 113 (rev. ed. 1929).

The first-century naturalist Pliny reported that blood was used to treat epilepsy. The second-century physician Aretæus reported the same treatment of this disorder: "I have seen persons holding a cup below the wound of a man recently slaughtered, and drinking a draught of the blood." THE EXTANT WORKS OF ARETÆUS, THE CAPPADOCIAN 471 (F. Adams trans. & ed. London 1856). Aside from the consumption of blood in unbled meats and as a constituent of foods such as blood sausages and puddings, the drinking of blood for its imagined therapeutic benefits continued down through the centuries. For example, "In 1483 . . . Louis XI of France was dying. 'Every day he grew worse,

and the medicines profited him nothing, though of a strange character; for he vehemently hoped to recover by the human blood which he took and swallowed from certain children.'" R. TANNAHILL, FLESH AND BLOOD—A HISTORY OF THE CANNIBAL COMPLEX 63-64 (1975).

The first reported blood transfusion is said to have been practiced on Pope Innocent VIII in 1492. The three ten-year-old boys from whom the transfused blood was drawn "died without delay" and "the Pontiff's life was not saved." DIARIO DELLA CITTÁ DI ROMA DI STEFANO INFESSURA [Diary of the City of Rome] 275, 276 (O. Tommasini ed. 1890); 4 THE ENCYCLOPEDIA AMERICANA 113 (rev. ed. 1929). After William Harvey's observations on the circulatory system were published in 1628, transfusion research, primarily involving animals, began to grow. "[T]ransfusion was thought of not only as a cure, but also as a rejuvenator. Attempts were then made to cure various diseases, such as fevers, leprosy, insanity, and hydrophobia." *Id.*

The first 'successful' transfusion of a human subject was performed by the Frenchman Jean Baptiste Denis on a fifteen-year-old boy in June 1667. The boy had been suffering a fever for several months and had been bled by his physicians twenty times when Denis gave him half a pint of lamb's blood. Since the boy did not die, the transfusion was considered a success, although it is not known "whether the cessation of the blood-letting played a more important role than did the transfusion." P. HAGEN, *supra*, at 12. In November 1667 in England, Richard Lower "transfused a healthy but mildly insane man with the blood of a

lamb." *Id.* at 11. This man too survived and so his transfusion also was deemed a success. However, because of the incompatibility of animal and human blood and the consequent deaths of transfused patients, the Faculty of Medicine of Paris, the English parliament, the Italian government, and the Pope soon banned all transfusions. *Id.* at 12; Solomon, *A History of Transfusion Medicine*, in III AMER. ASSOC. BLOOD BANKS, ADMINISTRATIVE MANUAL 1 (A. Ross ed. 1990).

This ban on transfusion practice effectively curbed further transfusion experiments for some 150 years until 1818 when an English obstetrician, James Blundell, performed the first transfusion of human blood into another person. *Id.* Through previous research Blundell had concluded "that the blood of any one species (eg, sheep) might not serve for any other species (eg, dogs)" and therefore "that the blood of animals might also be harmful to human beings." P. HAGEN, *supra*, at 12. Thus, by the latter quarter of the nineteenth century, "the use of animal blood was abandoned for human transfusion therapy." Solomon, *supra*, at 1. Nevertheless, human to human transfusions remained a complex, dangerous procedure with a high rate of mortality. *Id.*; P. HAGEN, *supra*, at 12.

Modern transfusion science had its beginning in the early 1900's when Karl Landsteiner, an Austrian physician, identified "isoagglutinins in man and by 1902 had defined the four blood groups of the ABO system." Solomon, *supra*, at 2. With the development of anticoagulant additives around the time of World War I, direct vein-to-vein transfusions of blood from donor to recipient began to be

replaced by the collection and storage of blood for later use. *Id.* The discovery of the complexities of the Rhesus (Rh) system between 1939 and 1940 and on into the early 1940's confirmed the importance of identifying blood by Rh status. "It was not, however, until the concept of blood banks was introduced and the exigencies of World War II stimulated the investigation of methods for blood preservation that blood became readily available and blood transfusion became popular." M. WINTROBE, CLINICAL HEMATOLOGY 491 (8th ed. 1981) (footnote omitted). Thus, it was after "the end of World War II [that] the major elements of this nation's transfusion establishment were in place" and the use of transfused blood amongst the civilian population started to become a commonplace, standard medical procedure. Solomon, *supra*, at 3.

2. Blood and the Holy Scriptures

Although the preceding summary may give the impression that blood has always been used for some sort of perceived nutritional or therapeutic purposes, the Bible shows that there was a time before the ascendancy of the ancient nations of Egypt and Assyria when the entire human family knew and obeyed God's law on blood. After Jehovah God had created Adam and Eve and told them to fill the earth with their offspring and subdue it, he gave them

> "all vegetation bearing seed which is on the surface of the whole earth and every tree on which there is the fruit of a tree bearing seed. To YOU let it serve as food. And to every wild beast of the earth and to every flying creature of the heavens and to everything

> moving upon the earth in which there is life as a soul I have given all green vegetation for food."

Genesis 1:28-30. That animal flesh (and therefore blood) was not intended as human food was confirmed after the Deluge. By the time of Noah, the violence and badness of mankind had reached the point where God was compelled to destroy the human race save Noah and his family. *Genesis* 6:5-8, 17; 2 *Peter* 2:5. After the Flood, when Noah and his wife and their three sons and their wives constituted the entire human family, Jehovah God gave them the following instructions:

> "Be fruitful and become many and fill the earth. And a fear of YOU and a terror of YOU will continue upon every living creature of the earth and upon every flying creature of the heavens, upon everything that goes moving on the ground, and upon all the fishes of the sea. Into YOUR hand they are now given. Every moving animal that is alive may serve as food for YOU. As in the case of green vegetation, I do give it all to YOU. Only the flesh with its soul—its blood—YOU must not eat."

Genesis 9:1-4. Thus, although men could now eat animal flesh as food, they were not to consume the animal's blood.

Over 850 years later, when the nation of Israel entered into a covenant relationship with Jehovah, the prohibition on blood given to Noah was restated in the Mosaic Law:

> And Jehovah went on to speak to Moses, saying: "Speak to Aaron and his sons and all the sons of Israel, and you must say to them, 'This is the thing

> that Jehovah has commanded, saying: . . . "As for any man of the house of Israel or some alien resident who is residing as an alien in their midst who eats any sort of blood, I shall certainly set my face against the soul that is eating the blood, and I shall indeed cut him off from among his people. For the soul of the flesh is in the blood, and I myself have put it upon the altar for you to make atonement for YOUR souls, because it is the blood that makes atonement by the soul in it. That is why I have said to the sons of Israel: 'No soul of you must eat blood and no alien resident who is residing as an alien in your midst should eat blood.'"'"

Leviticus 17:1, 2, 10-12; *see also Deuteronomy* 12:23-25; *Leviticus* 7:26, 27. The seriousness of this prohibition is explained by one Bible commentary as follows:

> This strict injunction not only applied to the Israelites, but even to the strangers residing among them. The penalty assigned to its transgression was the being 'cut off from the people,' by which the punishment of death appears to be intended (comp. Heb. x, 28), although it is difficult to ascertain whether it was inflicted by the sword or by stoning.

I McCLINTOCK AND STRONG'S CYCLOPÆDIA OF BIBLICAL, THEOLOGICAL AND ECCLESIASTICAL LITERATURE 834 (reprint 1981).

Although the Law of Moses was fulfilled with the sacrificial death of Jesus Christ, *see Romans* 10:4; *Colossians* 2:13, 14; *see also Galatians* 3:23-29, God's original law on blood persisted. In the first century, some sixteen years

after Christ's death, resurrection and ascension, the first council of the newly established Christian church convened in Jerusalem to settle the issue whether non-Jews converting to Christianity had to be circumcised according to the Mosaic Law. *Acts* 15:1-2. In considering this issue, "the apostles and older men in Jerusalem" reviewed Jehovah's original instructions to Noah as well as provisions of the law Jehovah had given to the nation of Israel through Moses. *Acts* 15:2-21. The decision reached was unanimous. As the Bible records, the council announced the following decision to all first-century Christians: "'[T]he holy spirit and we ourselves have favored adding no further burden to YOU, except these necessary things, to keep abstaining from things sacrificed to idols and from blood and from things strangled and from fornication. If YOU carefully keep yourselves from these things, YOU will prosper.'" *Acts* 15:28, 29; *see also Acts* 21:25.

Thus, from the time of Noah, on through Israel's covenant relationship with Jehovah, and finally again with the newly formed Christian congregation in the first century, Jehovah consistently commanded those serving him to 'abstain from blood.'

3. Commentary on the Christian Prohibition of Blood

Respect for this plain Scriptural directive amongst early Christians is well documented. In the second century, when persecutors of the early Christians falsely accused them of cannibalistically eating their own children, a young Christian woman named Biblis reportedly responded: "How can we eat infants—we, to whom it is not lawful to

eat the blood of beasts." W. JONES, THE HISTORY OF THE CHRISTIAN CHURCH 106 (n.p. 1837); Eusebius, in I THE ECCLESIASTICAL HISTORY 26 (Loeb Classical Library 1980). Commenting on similar accusations, the early Latin theologian Tertullian contrasted the Romans' practice of drinking blood and eating it in their foods with the Christians' abhorrence for blood:

> Let your unnatural ways blush before the Christians. We do not even have the blood of animals at our meals, for these consist of ordinary food. . . . At the trials of Christians you offer them sausages filled with blood. You are convinced, of course, that the very thing with which you try to make them deviate from the right way is unlawful for them. How is it that, when you are confident that they will shudder at the blood of an animal, you believe they will pant eagerly after human blood?

TERTULLIAN, APOLOGETICAL WORKS 33 (R. Arbesmann trans. 1950); TERTULLIAN, APOLOGY 53 (Loeb Classical Library, T. Glover trans. 1931). And the third-century Roman lawyer Minucius Felix wrote: "For us it is not permissible either to see or hear of human slaughter; we have such a shrinking from human blood that at our meals we avoid the blood of animals used for food." M. FELIX, OCTAVIUS 409 (Loeb Classical Library 1977); *see also* IV THE ANTE-NICENE FATHERS 192 (A. Roberts & J. Donaldson eds. 1956). As Bishop John Kaye commented on the historical evidence of the practices of the early Christians: "The Primitive Christians scrupulously complied with the decree pronounced by the Apostles at Jerusalem, in abstaining from things strangled and from blood."

J. KAYE, THE ECCLESIASTICAL HISTORY OF THE SECOND AND THIRD CENTURIES 146 (3d ed. London 1845).[2]

With the merging of the Roman state and the Christianity then practiced during the reign of Constantine in the fourth century, the first signs of deviation from the unqualified Biblical prohibition of blood became evident. According to one authority:

> [I]n the New Testament, instead of there being the least hint intimating that we are freed from the obligation, it is deserving of particular notice that at the very time that the Holy Spirit declares by the apostles (*Acts* xv) that the Gentiles are free from the yoke of circumcision, abstinence from blood is explicitly enjoined, and the action thus prohibited is classed with idolatry and fornication. After the time of Augustine, the rule began to be held merely as a temporary injunction. It was one of the grounds alleged by the early apologists against the calumnies of the enemies of Christianity that, so far were they from drinking human blood, it

2. For other second- and third-century references supporting this application of Acts 15:28, 29, see *The Stromata, or Miscellanies*, in II THE ANTE-NICENE FATHERS 427 (A. Roberts & J. Donaldson eds. 1962); *Origen Against Celsus*, in IV THE ANTE-NICENE FATHERS 650 (A. Roberts & J. Donaldson eds. 1956); *The Clementine Homilies*, in VIII THE ANTE-NICENE FATHERS 268 (A. Roberts & J. Donaldson eds. n.d.); *Origen's Commentary on Matthew*, in X THE ANTE-NICENE FATHERS 441 (A. Menzies ed. n.d.); *Recognitions of Clement*, in VIII THE ANTE-NICENE FATHERS 142-43 (A. Roberts & J. Donaldson eds. n.d.).

> was unlawful for them to drink the blood even of irrational animals. Numerous testimonies to the same effect are found in after ages. (Bingham, *Origines Ecclesiasticae*, book xvii, chapter v, section xx).

I MCCLINTOCK AND STRONG'S CYCLOPÆDIA OF BIBLICAL, THEOLOGICAL AND ECCLESIASTICAL LITERATURE 834 (reprint 1981); *see* E. REUSS, LA BIBLE: LA THÉOLOGIE JOHANNIQUE 163 (1879) ("the precepts hereby set down in a precise and methodical manner [in Acts 15] are qualified as indispensable, giving the strongest proof that in the apostles' minds this was not a temporary arrangement, or a provisional measure"); *see also* G. RICCIOTTI, THE ACTS OF THE APOSTLES 243 (1958) ("in succeeding centuries down to the Middle Ages, we encounter unexpected echoes of this early 'abomination' [of blood], due unquestionably to the decree [in Acts 15:29]").

For example, during the Trullan council held at Constantinople in 692 C.E., the following rule was set forth: "The eating of the blood of animals is forbidden in Holy Scripture. A cleric who partakes of blood is to be punished by deposition, a layman with excommunication." C. HEFELE, A HISTORY OF THE COUNCILS OF THE CHURCH, FROM THE ORIGINAL DOCUMENTS 232 (1896). About 200 years later, Regino, the abbot of Prüm (Germany), showed that the Biblical prohibition of blood was still respected in his day:

> The apostles' letter sent from Jerusalem advises that these things must necessarily be observed. (Acts 15) Also, [Christians must abstain from eating] something caught by a beast, for that too is likewise strangled;

> and from blood, that is, it must not be eaten with blood. . . .
>
> At the same time, this must also be considered: that a thing strangled, and blood, are viewed in the same way as idolatry and fornication. Wherefore, it should be proclaimed to all what a grievous sin it is to eat blood, since it is placed together with idols and fornication. If anyone shall violate these commands of the Lord and the apostles, let him be suspended from the communion of the church until he should appropriately repent.

Regino, *Libri Duo de Ecclesiastics Disciplinis et Religione Christiana* [Two Books Concerning the Ecclesiastical Teachings and the Christian Religion], in 132 PATROLOGIÆ LATINA cols. 354, 355 (J. Migne ed. Paris 1853).

In the twelfth century, Otho, a bishop of Bamberg, explained to converts in Pomerania "that they should not eat any thing unclean, or which died of itself, or was strangled, or sacrificed to idols, or the blood of animals." I TERTULLIAN 109 (C. Dodgson trans. n.p. 1842). Martin Luther also recognized the implications of the first-century directive on blood:

> Now if we want to have a church that conforms to this council (as is right, since it is the first and foremost council, and was held by the apostles themselves), we must teach and insist that henceforth no prince, lord, burgher, or peasant eat geese, doe, stag, or pork cooked in blood . . . . And burghers and peasants

> must abstain especially from red sausage and blood sausage . . . .

41 LUTHER'S WORKS (Church and Ministry III) 28 (E. Gritsch ed. n.d.). John Calvin too observed that the original prohibition given to Noah "had been given to the whole world immediately after the Flood." 2 J. CALVIN, COMMENTARY ON THE ACTS OF THE APOSTLES 50 (J. Fraser trans. 1966). And seventeenth-century theologian Étienne de Courcelles was equally convinced that Christians should abstain from blood. Speaking of Acts 15:28, 29, he said:

> The apostles, by their decree, wished to remedy the ignorance of these persons [*i.e.*, the Gentile converts]; whereby relieving them of the yoke of circumcision and other legal precepts, they nonetheless advised that those things must be retained that were already observed from antiquity by the foreigners remaining among the Israelites, [things] such as were transmitted to Noah and his sons.

de Courcelles, *Diatriba de Esu Sanguinis Inter Christianos* [Discourse Concerning the Eating of Blood Among Christians], in OPERA THEOLOGICA 971 (Amsterdam 1675).

As mentioned earlier, by the latter half of the seventeenth century, experiments in transfusion practice were under way. Bartolomeo Santinelli, an Italian physician, wrote this about the new medical practice in view of the injunction in Acts:

> Although indeed the prohibition of the use of blood would have in view only that man should not eat it,

> for which reason it would seem to pertain less to our cause, nonetheless the purpose of that injunction is contrary to today's transfusion [practice], so that the one who employs it would appear to oppose God who extends clemency.

B. SANTINELLI, CONFUSIO TRANSFUSIONIS, SIVE CONFUTATIO OPERATIONIS TRANSFUNDENTIS SANGUINEM DE INDIVIDUO AD INDIVIDUUM [A Confounding of Transfusion, or A Refutation of the Operation of Transfusing Blood from Individual to Individual] 130, 131 (Rome 1668). Likewise, Thomas Bartholin, a seventeenth-century professor of anatomy at the University of Copenhagen, wrote:

> Those who drag in the use of human blood for internal remedies of diseases appear to misuse it and to sin gravely. . . . Cannibals are condemned. Why do we not abhor those who stain [their] gullet with human blood? . . .
>
> Similar is the receiving of alien blood from a cut vein, either through the mouth, a thing that is recommended for senile hectic fever, or by instruments of transfusion, a thing that, contrived through the divisings of the moderns, already has come almost into disuse, when it scarcely has become known in the world. The authors of this operation are held in terror by the divine law, by which eating of blood is prohibited.

T. BARTHOLIN, DE SANGUINIS ABUSU DISPUTATIO [A Disputation Concerning the Misuse of Blood] 140-41, 142-43 (Frankfurt 1676).

In the next century, Sir Isaac Newton expressed his understanding of the use of transfused blood in view of the Scriptures:

> This law [of abstaining from blood] was ancienter than the days of Moses, being given to Noah and his sons, long before the days of Abraham: and therefore when the Apostles and Elders in the Council at Jerusalem declared that the Gentiles were not obliged to be circumcised and keep the law of Moses, they excepted this law of abstaining from blood, and things strangled, as being an earlier law of God, imposed not on the sons of Abraham only, but on all nations.

I. NEWTON, THE CHRONOLOGY OF ANTIENT KINGDOMS AMENDED 184 (Dublin 1728). As another eighteenth-century scientist concluded:

> The prohibition to eat blood, given to Noah, seems to be obligatory on all his posterity . . . . If we interpret this prohibition of the apostles by the practice of the primitive Christians, who can hardly be supposed not to have rightly understood the nature and extent of it, we cannot but conclude, that it was intended to be absolute and perpetual.

2 THE THEOLOGICAL AND MISCELLANEOUS WORKS, &C. OF JOSEPH PRIESTLEY 376, 379 (reprint 1972).

As for any so-called 'Christian liberty' permitting exception to the Biblical directive, clergyman William Jones responded:

> Nothing can be more express than the *prohibition*, Acts XV.28, 29. Can those who plead their "Christian liberty" in regard to this matter point us to any part of the Word of God in which this prohibition is subsequently annulled? If not, may we be allowed to ask, "By what authority, except his own, can any of the laws of God be repealed?"

W. JONES, THE HISTORY OF THE CHRISTIAN CHURCH 106 (n.p. 1837). Another nineteenth-century commentator, Baptist theologian Andrew Fuller, made the following comment on Genesis 9:3, 4, the original blood prohibition given to Noah:

> This, being forbidden to Noah, appears also to have been forbidden to all mankind; nor ought this prohibition to be treated as belonging to the ceremonies of the Jewish dispensation. It was not only enjoined before that dispensation existed, but was enforced upon the Gentile Christians by the decrees of the apostles, Acts XV.20. . . . Blood is *the life* and God seems to claim it as sacred to himself.

THE COMPLETE WORKS OF THE REV. ANDREW FULLER 751 (n.p. 1842). Thus, "[t]he implication seems very clear that we are still to respect the sanctity of the blood, since God has appointed it to be a symbol of the atoning blood of Jesus Christ. Therefore it is not to be consumed by any believer who wishes to be obedient to Scripture." G. ARCHER, ENCYCLOPEDIA OF BIBLE DIFFICULTIES 86 (1982).

4. Jehovah's Witnesses and Blood

As students of the Bible, Jehovah's Witnesses have always been obedient to the divine prohibition of blood. Before the advent of popular transfusion practice following the Second World War, the Witnesses, like many conscientious Christians throughout the centuries, were cognizant of and obedient to the command in the Bible book of Acts. In a discussion of chapter 15 of Acts, the November 15, 1892, issue of *Zion's Watch Tower* recognized the abiding validity of the original instructions given to Noah: "The eating of blood was forbidden, not only by the Jewish Law, but also before the Law was given. The same command was given to Noah. See Deut. 12:23; Gen. 9:4." *Id.* at 350. Repeated discussions of this subject were considered by Jehovah's Witnesses over the next fifty years. *See The Watch Tower*, Apr. 15, 1909, at 117 (discussing Acts ch. 15); *The Watch Tower*, Dec. 15, 1927, at 371-72 (discussing Genesis ch. 9); *The Watch Tower*, Nov. 1, 1930, at 334 (same); *The Watchtower*, Dec. 1, 1938, at 356-57 (same); *The Watchtower*, Dec. 1, 1944, at 362 (discussing Genesis ch. 9 and Leviticus ch. 17).

With the conclusion of World War II and the consequent widespread use of transfused blood in civilian medical practice, the July 1, 1945, issue of *The Watchtower* again reviewed Jehovah's view of the proper use of blood from the time of Noah, through the time of the Law Covenant, down to the beginning of the Christian era. This issue of *The Watchtower* concluded:

> Seeing, then, that the Most High and Holy God gave plain instructions as to the disposition of blood, in harmony with his everlasting covenant made with Noah and all his descendants; and seeing that the only use of blood that he authorized in order to furnish life to humankind was the use of it as a propitiation or atonement for sin; and seeing that it was to be done upon his holy altar or at his mercy seat, and not by taking such blood directly into the human body; therefore it behooves all worshipers of Jehovah who seek eternal life in his new world of righteousness to respect the sanctity of blood and to conform themselves to God's righteous rulings concerning this vital matter.

The Watchtower, July 1, 1945, at 201. Since that time, the Witnesses' stand on blood has remained steadfast, notwithstanding the vicissitudes of transfusion practice. *See, e.g.*, *Awake!*, Aug. 8, 1950, at 3-12; WATCH TOWER BIBLE & TRACT SOC'Y PA., BLOOD, MEDICINE, AND THE LAW OF GOD (1961); WATCH TOWER BIBLE & TRACT SOC'Y PA., JEHOVAH'S WITNESSES AND THE QUESTION OF BLOOD (1977); WATCH TOWER BIBLE & TRACT SOC'Y PA., HOW CAN BLOOD SAVE YOUR LIFE? (1990).

Today, just as after the Flood and just as after the first apostolic council in the first century, Jehovah's Witnesses are firmly resolved to obey God's Word on blood. As sincere Christians, the Witnesses will continue to apply God's Word in their lives and will follow the example of the first-century Christians and other conscientious Chris-

tians throughout the ensuing centuries who have been obedient to God in abstaining from blood.[3]

3. Popular assumptions notwithstanding, Jehovah's Witnesses' resolute refusal of transfusion therapy has not prevented them from receiving quality medical care. Everything from massive traumatic hemorrhage, to heart, liver, and kidney transplant, to major gastrointestinal, gynecologic, neurologic, orthopedic, spinal, and thoracic surgery have been and are being successfully and safely managed without transfused blood. See, for example, Howell & Bamber, *Severe Acute Anaemia in a Jehovah's Witness—Survival Without Blood Transfusion*, 42 Anaesthesia 44 (1987); Corno, et al., *Heart Transplantation in a Jehovah's Witness*, J. Heart Transplantation, Mar./Apr. 1986, at 175; Kaufman, et al., *A Single-Center Experience of Renal Transplantation in Thirteen Jehovah's Witnesses*, 45 Transplantation 1045 (1988); Nearman & Eckhauser, *Postoperative Management of a Severely Anemic Jehovah's Witness*, 11 Critical Care Med. 142 (1983); Bonakdar, et al., *Major Gynecologic and Obstetric Surgery in Jehovah's Witnesses*, 60 Obstetrics & Gynecology 587 (1982); Mariorenzi & Pierik, *Quadruple Major Joint Replacement in Member of Jehovah's Witnesses*, 15 Orthopaedic Rev. 531 (1986); Winter & Swayze, *Severe Neurofibromatosis Kyphoscoliosis in a Jehovah's Witness—Anterior and Posterior Spine Fusion Without Blood Transfusion*, 8 Spine 39 (1983); Henling, et al., *Cardiac Operation for Congenital Heart Disease in Children of Jehovah's Witnesses*, 89 J. Thoracic & Cardiovascular Surgery 914 (1985). *See generally* WATCH TOWER BIBLE & TRACT SOC'Y PA., HOW CAN BLOOD SAVE YOUR LIFE? 13-17 (1990). In fact, in view of the ever-increasing knowledge of the hazards and complications of transfusion therapy, the Witnesses' confidence in the wisdom of heeding Jehovah's law on blood continues to grow.

CONCLUSION

Elaine Munn was a competent adult who had dedicated her life to serving her God Jehovah. *Luke* 10:27. Nothing was more important to her than doing Jehovah's will. As a true Christian, she strove to imitate Jesus in his obedience to his Father. *John* 4:34; 1 *Peter* 2:21; 1 *Corinthians* 11:1. However, because of her obedience to her Bible-trained Christian conscience, her husband and surviving children have been denied redress for her death. The actions of defense counsel at trial and the actions and rationale of both the district court and the court of appeals are inexcusable. The petition for writ of certiorari should be granted.

Respectfully submitted,

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